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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,383	04/30/2004	Mark Wayne Domanico	LUX-031149	3382

22876 7590 07/20/2006

FACTOR & LAKE, LTD
1327 W. WASHINGTON BLVD.
SUITE 5G/H
CHICAGO, IL 60607

EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/709,383

Applicant(s)

DOMANICO, MARK WAYNE

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 6-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roiger (US 5,560,092).

Roiger discloses a process for renovating an existing bathtub. The process comprises providing a preformed bathtub liner (23), which is suitable sized to fit an existing bathtub (21); applying an *"insulating adhesive filler"* which *"is preferably curable polyurethane foam, affording both heat and noise insulation"* onto surfaces of the existing bathtub; positioning the preformed bathtub liner into the existing bathtub; and, curing the polyurethane foam to bond the preformed bathtub liner to the existing bathtub (col. 1 lines 36-38; col. 2 lines 18-50; figures 1-12). While not explicitly disclosed, it is understood that, in a process for adhesively bonding a

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preformed bath-liner to an existing bathtub, pressure must inherently have been exerted in order to effectively bond the bath-liner to the existing bathtub. In any event, it would have been obvious in the art to apply pressure to a preformed bathtub liner during a bonding operation in order to effectively bond the preformed bathtub liner to the existing bathtub.

4. Claims 2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roiger (US 5,560,092) as applied to claim 1 in the immediately preceeding paragraph.

With respect to claim 2, cast iron or pressed metal bathtubs are notoriously well known in the art. It would have been obvious in the art to provide a preformed liner to an existing/old cast iron or pressed metal bathtub in order to cover the wear/rust on the existing bathtub, thereby enhancing the aesthetic appearance of the bathtub and also providing a protective covering to an existing bathtub.

With respect to claims 4-5, since spraying or pouring a foamable polyurethane to a substrate is an art recognized effective and yet a convenient way for applying the foamable polyurethane to the substrate, these claims would have been obvious in the art.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the current state of the art as evidence from the teachings of either (Parkay et al (US 5,742,955), Saladino (US 4,043,853) or May (US 5,650,228)) in view of Roiger (US 5,560,092) and optionally further in view of (Huber et al (US 6,164,021) or JP 05009454 A).

With respect to claims 1 and 9-10, it is a current state of the art to adhesively bond a preformed bath-liner to an existing bathtub, where the bath-liner applied to the bathtub such that it follows the contour of the bathtub as exemplified in the teachings of either (Parkay et al (col. 1 lines 6-23; col. 3 lines 1-10; col. 5 lines 37-51; col. 6 lines 12-19; figures 1-6), Saladino (col. 7 line 18 to col. 8 line 41; figures 5A-5G) or May (abstract; col. 3 line 38 to col. 4 line 50; figures 1-3). While not explicitly disclosed, it is understood that, in adhesively bonding a bath-liner to an existing bathtub, it is implicitly understood that pressure must imperatively have to be exerted in order to effectively bond the bath-liner to the existing bathtub and in order for the bath-liner to properly follow the shape/contour of the bathtub. In any event, it would have been obvious in the art to apply pressure to a bathtub liner during a bonding operation in order to effectively bond the bathtub liner to the existing bathtub.

The current state of the art differs from claim 1 as presently recited in that, the current state of the art does not disclose using a foamable polyurethane in order *"to effectively insulate the bathtub liner"*. However, it would have been obvious in the art to use a foamable polyurethane adhesive/sealant for bonding a bathtub liner to an existing bathtub, thereby effectively insulating the bathtub liner, because: a) Roiger discloses using a foamable polyurethane adhesive for bonding a preformed covering plastic bathtub to an old/existing bathtub in order to afford "both heat and noise insulation" to a renovated bathtub (col. 1 lines 36-38; col. 2 lines 18-50; figures 1-12); and optionally, b) Huber teaches using a foamable polyurethane adhesive for bonding roof tile which is made of *"ceramic, brick, stone, clay, plastic, wood, metal,*

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rubber or bituminous materials" onto a base of a roof and for forming water-tight seal around *"most troublesome areas"* *"to prevent the infiltration of wind-driven rain, hail or snow"* (col. 1 line 18 to col. 2 line 47) or JP '454 teaches using a foamable polyurethane type adhesive for forming water-tight bonding of PVC pipes, panels, etc. (abstract).

With respect to claim 2, see column 5 lines 9-16 of the May patent.

With respect to claim 3, a foamable polyurethane adhesive which is applied onto a bath-liner is naturally flexible and expandable.

With respect to claims 4-5, applying a foamable polyurethane adhesive by spraying or pouring is an art recognized effective way for coating a substrate with the adhesive.

With respect to claim 6, see figures 1-3 of the May patent or figure 5 of the Parkay et al patent.

With respect to claim 7, see figures 3-4 of the Parkay et al patent.

With respect to claim 8, it is a notoriously common practice in the art to caulk any visible gaps in a bathroom to prevent water from seeping into the gaps. Also see figure 12 of the Roiger patent.

Response to Arguments

6. Applicant's arguments with respect to claim 1 has been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richard Crispino can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sam Chuan C. Yao
Primary Examiner
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